

REMARKS

By this Amendment, Claim 75 has been amended. Claims 72-93 are pending in the application. Reconsideration of the June 28, 2004, Official Action is respectfully requested.

Rejection Under 35 U.S.C. § 102

Claims 72-74 and 76-83 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,013,155 to McMillin et al. ("McMillin"). The reasons for the rejection are stated at pages 2-6 of the Official Action.

The present application is a divisional of U.S. Patent Application No. 08/772,374, which was filed on December 23, 1996 (now U.S. Patent No. 6,184,158). McMillin is a continuation-in-part of U.S. Patent Application No. 08/672,315, filed on June 28, 1996 and issued on June 11, 2000.

McMillin facially may qualify as *prima facie* prior art under 35 U.S.C. § 102(e) against the present application. However, as discussed at MPEP § 715.07(III), page 700-250 (May 2004), Applicants can establish a prior invention by providing a Rule 131 Declaration that includes evidence of their "reduction to practice of the invention prior to the effective date of the reference." As further stated at page 700-251 of the MPEP, "[i]n general, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose."

In order to establish an earlier invention date than McMillin's effective date of June 28, 1996, and thus eliminate McMillin as a reference against the present application, Applicants have attached a Declaration Under 37 C.F.R. § 1.131 by Brian McMillin and Butch Berney ("Rule 131 Declaration") who are two co-inventors

of the claimed invention. The other named co-inventors, Paul Shufflebotham, Alex Demos, Huong Nguyen and Monique Ben-Dor are no longer employed at Lam Research Corporation, the assignee of this application, and accordingly are unavailable to execute the Rule 131 Declaration.

The Rule 131 Declaration provides evidence that the subject matter recited in independent Claim 72 existed and worked for its intended purpose prior to June 28, 1996. Thus, as Applicants have established reduction to practice of the claimed subject matter prior to June 28, 1996, McMillin has been eliminated as a reference under 35 U.S.C. § 102(e) against Claim 72 and dependent Claims 73, 74 and 76-83.

Therefore, withdrawal of the rejection is respectfully requested.

First Rejection Under 35 U.S.C. § 103

Claim 75 stands rejected under 35 U.S.C. §103(a) over McMillin. The reasons for the rejection are stated at page 7 of the Official Action.

Claim 75 has been rewritten in independent form. As acknowledged in the Official Action, McMillin does not disclose or suggest the features of "a plurality of injector tubes adapted to introduce process gas into the processing chamber, all of the injector tubes ... including an orifice oriented relative to the axis thereof to direct the process gas in an upward direction away from an exposed surface of the substrate when the substrate is supported on the substrate support" (emphasis added), as recited in amended Claim 75.

The present application has an effective filing date of December 23, 1996. McMillin is a continuation-in-part of Application No. 08/672,315, filed on June 28, 1996 and issued on June 11, 2000. Accordingly, McMillin appears to have been

cited as a reference under 35 U.S.C. § 102(e) with respect to the subject matter of

Claim 75. However, according to 35 U.S.C. § 103(c):

Subject matter developed by another person, which qualifies as prior art only under one of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

McMillin and the present application are commonly assigned to Lam Research Corporation, as evidenced by the Assignments recorded at reel 9657/frame 0414 and reel 8471/frame 10053, respectively. In addition, McMillin and the claimed subject matter were, at the time the invention was made, subject to an obligation of assignment to the same person (i.e., Lam Research Corporation). Thus, McMillin does not qualify as a reference under 35 U.S.C. §§ 102(e), (f) or (g) pursuant to 35 U.S.C. § 103(c). Therefore, withdrawal of the rejection of Claim 75 under 35 U.S.C. §103(a) over McMillin is respectfully requested.

Second Rejection Under 35 U.S.C. § 103

Claims 84-93 stand rejected under 35 U.S.C. §103(a) over McMillin in view of U.S. Patent No. 5,691,876 to Chen et al. ("Chen"). The reasons for the rejection are stated at pages 8-13 of the Official Action.

For the reasons stated above, McMillin does not qualify as a reference under 35 U.S.C. §§ 102(e), (f) or (g) pursuant to 35 U.S.C. § 103(c). Therefore, withdrawal of the rejection of Claims 84-93 under 35 U.S.C. §103(a) over McMillin in view of Chen is respectfully requested.

Conclusion

For the foregoing reasons, allowance of the application is respectfully requested. Should there be a need to discuss this response, the undersigned attorney may be contacted at the number given below.

Respectfully submitted,

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By: _____


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